Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-998

RODNEY A. LOGAL,

Petitioner,

vs.

WILLIAM C. CRUSE, JERRY W. COOK, BILLY D. MARTIN and RANDALL CZEKAJ,

Respondents.

BRIEF OF RANDALL CZEKAJ IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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Randall Czekaj, Respondent prays that a Writ of Certiorari to review the judgments of the Supreme Court of Indiana in the above case on October 13, 1977 be denied.

OPINIONS BELOW

Petitioner's statement of the Opinions delivered in the Courts below is substantially correct.

JURISDICTION

Petitioner seeks to invoke jurisdiction of this Court under 28 U.S.C. 1257 (3).

Rule 19, Federal Rules - Supreme Court, provides *inter alia,* that a review on a writ of certiorari is not a matter of right, and will be granted only where there are "special and important reasons" therefore. Petitioner has failed to allege any "special or important" reasons. Moreover, Petitioner has failed to state in his petition any of the "character of reasons" for such review which are specified in Rule 19. Respondent asserts that sufficient jurisdictional grounds, as provided by the rules, have not been stated by Petitioner. The writ should, accordingly, be denied.

CONSTTTUTIONAL PROVISIONS AND TRIAL RULES INVOLVED

Petitioner's abstract statement of parts of the 5th Amendment to the Constitution and the 14th Amendment, Section 1 are correct. Indiana Trial Rule 37 A, B(2), C(4) and Trial Rule 41(F) are correctly recited.

STATEMENT OF THE CASE

Petitioner's statement of the case is substantially correct. Respondent would supplement such statement by adding that throughout all of the Trial Court, Appellate Court and Supreme Court of Indiana proceedings, Petitioner was at all times represented by counsel.

Respondent further states that in addition to the failures of Petitioner to comply with pertinent Indiana Trial Rules referred to in Petitioner's Petition, the Trial Court, after hearing lengthy arguments on the Motion to Correct Errors, granted Petitioner the right to file a brief in support of his position which Petitioner also failed to file.

QUESTIONS FOR REVIEW

The sole question for review simply stated is, whether the Supreme Court of Indiana's affirmation of the Appellate Court of Indiana's decision that the Trial Court did not err in granting Respondent's Motion to Dismiss and imposing Sanctions for Petitioner's failure to make discovery, was violative of the 5th and 14th Amendments to the Constitution of the United States. The Petitioner does not attack the Constitutionality of the invoked Indiana Trial Rules, which are patterned after the Federal Rules, or the right of the trial court to enforce such rules, but attacks the enforcement of the same against this particular plaintiff by the respective Indiana Courts.

ARGUMENT

I.

RESPONSE TO THE CONTENTION THAT THE INDIANA COURT'S ENFORCEMENT OF ITS TRIAL RULES RELATING TO DISCOVERY IN A CIVIL ACTION VIOLATED THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION.

The Indiana Trial Rules provide for discovery in civil actions similar to that provided in the Federal Rules; Petitioner was represented at all times by counsel in the Trial Court and the respective appeals courts of Indiana, including the highest appellate tribunal, the Supreme Court of Indiana.

Petitioner concedes that "Both the petitioner's and respondent's rights to adequate discovery procedures and *the Court's power to enforce those procedures are acknowledged*" (Petitioner's Brief, Page 13) (Italics ours). Moreover, Petitioner does not assert that the Trial Court *did not have sufficient and adequate grounds to enforce the rule by dismissing petitioner's action and denying the Petitioner's Trial Rule 60(B) motion to reinstate.* (Italics ours). The bottom line of petitioner's argument is apparently predicated on this premise: A client may not be bound by the actions of his attorney or bound by notice to his attorney, when the attorney abandons the normal procedures of law and becomes charged with an abuse of the recognized discovery process, but is entitled to additional constitutional protection to ensure that his rights and property are protected. (Petitioner's Brief, Pages 11 and 12) Ironically, petitioner does not identify those constitutional protections, does not cite one authority in support thereof, and, in fact, presents no cogent argument supporting the premise. Petitioner does make mention of *Link* v. *Wabash R.R. Co.*, 370 U.S. 626, 8 L. Ed.2d 734, 82 S.Ct. 1386; however, in *Link,* supra, the Court disavowed the very theory petitioner now expounds. The Court stated:

> There is certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client. Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent.
>
> Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have "notice of all facts, notice of which can be charged upon the attorney." *Smith* v. *Ayer,* 101 U.S. 320, 326, 25 L.Ed. 995.

The Court in *Link,* supra, further stated:

> And if an attorney's conduct falls substantially below what is reasonable under the circumstances, the client's remedy is against the attorney in a suit for malpractice. But keeping this suit alive merely because plaintiff should not be penalized for the omissions of his own attorney would be visiting the sins of plaintiff's lawyer upon the defendant.

Petitioner further alludes to *Hammond Packing Co.* v. *Arkansas,* 212 U.S. 322, 330, 29 S.Ct. 270, 53 L.Ed. 530 which, again, supports denial of the petition in this case. The Court in substance stated,

> "as the power to strike an answer out and enter default . . . which is before us, is clearly referable to the undoubted right of lawmaking authority to create a presumption in respect to the want of foundation of

> an asserted defense against a defendant who suppresses or fails to produce evidence when legally called upon to give or produce, *our opinion is that the contention that the section was repugnant to the Constitution of the United States is without foundation.*" *Hammond Packing Co.*, supra, at 353, 354.

The Trial Court in this action rightfully exercised its discretion in dismissing plaintiff's action in accordance with Trial Rule 37. The soundness of this judicial decision was affirmed by both the Appellate and Supreme Court of Indiana. This Court has clearly held in *Link* v. *Wabash etc.*, supra, and *Hammond Packing Co.* v. *State of Arkansas,* supra, that such judicial decision does not violate the Constitution of the United States. Petition should, accordingly, be denied.

II.

WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE NO SUBSTANTIAL FEDERAL QUESTION WAS PRESENTED OR DECIDED.

Petitioner's sole issue presented has been heretofore posited as follows: A client may not be bound by the actions of his attorney or bound by notice to his attorney, when the attorney abandoned the normal procedures of law and becomes charged with an abuse of the recognized discovery process, but is entitled to additional constitutional protection to ensure his rights and property are protected. (Petitioner's Brief, Pages 11 and 12).

To afford the basis for review, either by appeal or certiorari, the federal question upon which the state court judgment hinges must be *substantial. Zucht* v. *King,* (1922) 260 U.S. 174, 43 S.Ct. 24, 67 L.Ed. 194; *Tidal Oil Co.* v. *Flanagan,* (1924) 263 U.S. 444, 44 S.Ct. 197, 68 L.Ed. 382. The Court in *Zucht,* supra, stated:

> But, although the validity of a law was formally drawn in question, it is our duty to decline jurisdiction whenever it appears that the constitutional question presented is not, and was not at the time of granting the writ, substantial in character. *Sugarman* v. *United States,* 249 U.S. 182, 184. *Zucht,* supra, at 176.

One of the attributes of a substantial federal question is the novelty of the question being presented to the Court. In the case of *Patterson* v. *Stanolind Oil & Gas Co.,* 305 U.S. 376, 83 L.Ed. 231, 59 S.Ct. 259, this Court was confronted with a decision on appeal, which decision was consonant with well settled principles of law. The Court in *Patterson* stated:

> "In that view, the state court applied well settled principles in denying plaintiff's contentions under the 14th Amendment. . . . The argument that regulatory provisions of the statute authorizing the commission to make its order fixing the drilling unit are void for indefiniteness, is without merit.
>
> In the light of our previous decisions, the plaintiff has failed to raise a substantial federal question, and the appeal is dismissed for want of jurisdiction."

Thus, if a question has been previously adjudicated by this court upon well settled principles, no substantial federal question is presented.

This Court has previously determined the issues raised by petitioner in *Link* v. *Wabash R. R. Co.,* supra, and *Hammond Packing Co.* v. *State of Arkansas,* supra. *Link,* supra, clearly refutes the proposition that a client is not bound by the acts of his attorney in failing to comply with the court's trial rules resulting in dismissal of his action. *Hammond Packing Co.* v. *State of Arkansas,* supra, decided that dismissal of an action for failure to comply with

trial rules by a trial court, is not violative of the 5th and 14th Amendments to the Constitution. Accordingly, no substantial federal question exists and this petition for certiorari should be denied.

III.

THERE ARE NO SPECIAL AND IMPORTANT REASONS TO GRANT CERTIORARI.

Rule 19 of this court provides in part that review on writ of certiorari will be granted only where there are "special and important reasons therefor." The "character of reasons" for granting the writ are therein outlined, none of which are here invoked, nor does petitioner state the character of reason which should be considered by the Court in this case.

Are there special and important reasons for granting the writ here? This case simply involves the enforcement of the Indiana Trial Rules and affirmance of the Trial Court's action by the Court of last resort in Indiana. There is no statute involved; moreover, petitioner does not contest the constitutionality of the discovery rules involved, or the Court's right to enforce them. His only contention is that the Court should not enforce the rules against him.

Even assuming, *arguendo*, that the decision of the Indiana state court is erroneous, this is not a matter of "substance" in the constitutional sense. This Court does not sit for the benefit of particular litigants. *Magnum Import Co.* v. *Coty*, (1922) 262 U.S. 159, 69 L.Ed. 922, 32 S.Ct. 531. As Mr. Justice Frankfurter pointed out:

> "Special and important reasons imply a reach to a problem beyond the academic or episodic. This is especially true where the issues involved reach constitutional dimensions . . ." *Rice* v. *Sioux City Memorial Park Cemetery*, (1955) 349 U.S. 70, 74, 99 L.Ed. 897, 75 S.Ct. 614.

Writ of certiorari should be used sparingly to bring up cases of public importance. This case does not have the "surface appearance of public importance." *Rice* v. *Sioux City Memorial Park Cemetery*, supra.

CONCLUSION

Respondent respectfully submits that this case is not a proper one for review by certiorari by this Court, and that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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